

1. The preliminary hearing Order should be affirmed.

2. Mr. Scott L. Lawrence worked for Arlwin Manufacturing Company, Inc., as a fiberglass roller. The company manufactures fiberglass parts for recreational vehicles and makes shower stalls and camper tops.

3. The outcome of this claim hinges upon Mr. Lawrence's credibility. Mr. Lawrence testified that he injured his back while he and a co-worker, Ricky Weber, were carrying an 80-to-90-pound fiberglass part across the plant. But Mr. Weber testified that Mr. Lawrence told him that he had hurt his back lifting a resin barrel. Mr. Lawrence also testified that he immediately reported the incident to Mr. Joe Wilson, the plant manager. But Mr. Wilson testified that Mr. Lawrence told him he hurt his back the previous Friday helping someone lift a shower. Other testimony was presented, some of which controverted and some of which supported Mr. Lawrence's allegations.

4. Judge Moore had the opportunity to observe Mr. Lawrence testify and found his testimony convincing despite the contrary evidence. In this instance, the Appeals Board gives some deference to the Judge's impressions of Mr. Lawrence's credibility. The Judge determined that Mr. Lawrence either injured or aggravated his back at work on August 23, 1999.

5. An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.¹ The test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.²

6. For preliminary hearing purposes, Mr. Lawrence has established that he either injured or aggravated his back while working for Arlwin Manufacturing Company, Inc., on or about August 23, 1999. Therefore, he is entitled to receive workers compensation benefits for that accident.

7. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the November 9, 1999 preliminary hearing Order entered by Judge Moore.

¹ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

² Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

³ K.S.A. 1998 Supp. 44-534a(a)(2).

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

c: Patrik W. Neustrom, Salina, KS
Donald J. Fritschie, Overland Park, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director